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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

Docket No. 72-729

IN THE MATTER OF THE CONTEMPT OF

ESTHER S. FRANKEL,

AN ATTORNEY AT LAW OF THE STATE OF NEW JERSEY,

Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT FOR THE STATE OF NEW JERSEY

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Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT FOR THE STATE OF NEW JERSEY

Introductory Paragraph

Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of New Jersey (C-50 September Term 1972) entered on September 21, 1972 (1a, infra), which denied petitioner's application for certification, with costs.

Opinions Below

No opinion of the New Jersey Supreme Court accompanied the above denial (1a, infra). The opinion of the Superior Court of New Jersey, Appellate Divison (A-873-71), the last court to which an appeal could be taken as a matter of right, was filed June 27, 1972. This opinion has not yet been reported and will be found at 2a, infra. The opinion of the Passaic County Court dated November 29, 1971 is reported in 117 N. J. Super. 296, and is found at 5a, infra. The decision of the Paterson Municipal Court, a part of the transcript of proceedings before the Municipal Court of Paterson, is found in 19a, et seq., infra. Its remarks were not officially reported.

Jurisdictional Grounds

(i) Petitioner has exhausted all appellate and review procedures in the State Courts, and those Courts have brushed aside the grave constitutional issues involved, the last being to deny certification on September 21, 1972.

(ii) These commanding constitutional questions raised in the State Courts should be settled by this Court.

(iii) There has been no application or order for rehearing; and no application for extension of time within which to file petition for certiorari.

(iv) The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257(3).

Questions Presented

A. The questions presented which were not resolved:

1. Whether re-instituting the arbitrary, rotating assignment system in the Municipal Courts, without providing for compensation to assigned attorneys denied petitioner

(a) Her First Amendment rights to dissent from what she believed to be an illegal and unconstitutional order;

(b) Her Thirteenth Amendment rights to be free from involuntary servitude;

(c) Her Fourteenth Amendment rights to due process that denies:

i) Her right to freedom of contract;

ii) Her right to equal protection of the laws;

B. The questions presented which were incorrectly resolved:

2. Whether the New Jersey statute N.J.S. 2A:10-1 and Rule 1:10-1 of New Jersey Rules Governing the Courts, under which petitioner was illegally convicted of contempt, compounded the injustices of the assignment system in violation of her First, Thirteenth and Fourteenth Amendment rights?

3. Whether the holding of petitioner in contempt should be reversed:

a) In that it is not predicated upon conduct which constitutes misbehavior to the court; or

b) Obstructs the administration of justice?

Federal Questions Raised

The federal issues herein involved raise questions of due process of law and of other constitutional rights, all of paramount importance to 12,500 members of the Bar in the State of New Jersey. Some of these federal contentions appeared in the Paterson Municipal Court, the court of first instance, 19a et seq.) where the proceeding was very brief and summary.

The constitutional contentions were all raised in the briefs of the petitioner at the County Court level (9a, 11a, infra) and again on appeal to the Superior Court of New Jersey, Appellate Division, (3a, infra). Finally, they were raised in our brief before the New Jersey Supreme Court on Petition for Certification.* None of the appellate courts reached the constitutional contentions of petitioner, and indeed, refused to consider petitioner's constitutional attacks on the revived assignment system, but affirmed the conviction of alleged contempt on the basis of the statute, N.J.S. 2A:10-1, and Rule 1:10-1 as set out in the "Certification and Order Adjudging Contempt of Court", (13a, infra) and the opinion of the County Court, (5a, infra).

Relevant United States Constitutional Amendments Involved

Amendment I

> Congress shall make no law . . . to petition the government for a redress of grievances.

Amendment VI

> In all criminal prosecutions the accused shall enjoy the right . . . to have the assistance of counsel for his defense.

Amendment XIII

> Section 1. Neither slavery or involuntary servitude, except as a punishment for crime . . . shall exist within the United States . . .

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* Because no opinion accompanied denial of certification, recourse must be had to petitioner's brief to find that Federal constitutional questions have been raised.

Amendment XIV

Section 1. . . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Relevant New Jersey Statute and Rule Involved
N.J.S. 2A:10-1

What Constitutes Contempt

"The power of any court of this State to punish for contempt shall not be construed to extend to any case except the:

(a) Misbehavior of any person in the actual presence of the court;

(b) Misbehavior of any officer of the court in his official transactions; and

(c) Disobedience or resistance by any court officer, or by any party, juror, witness or any person whatsoever to any lawful writ, process, judgment, order or command of the court.

Nothing contained in this section shall be deemed to affect the inherent jurisdiction of the superior court to punish for contempt."

New Jersey Court Rule R. 1:10-1

Contempt in Presence of Court

"Contempt in the actual presence of a judge may be adjudged summarily by the judge without notice

or order to show cause. The order of contempt shall recite the facts and contain a certification by the judge that he saw or heard the conduct constituting the contempt."

Concise Statement of the Case

A. Personal Background of Petitioner

The petitioner, Esther S. Frankel, is a resident of Passaic County, State of New Jersey. She has been engaged in the active practice of law since 1927 when she was admitted to the New York bar under her maiden name, Esther M. Strum and after her marriage and removal to the State of New Jersey, since 1932 when she was admitted to the New Jersey bar after passing the examination for admission. Her observation and experience at the bar have taught her that for legal representation of the accused indigent to be effective, it should not be under an assignment system whereby uncompensated attorneys, often inexperienced in criminal matters, are selected by rotation, but by compensated attorneys who can afford to devote to the indigent the same time and services that paying clients receive. Such representation should not be the subject of assigned counsel's charity, exacted from him or her, in the form of time or money given, to be sure, under a sub-liminal fear of offending the judiciary.

B. Societal Background

Since criminal offenses are an assault upon our Society, it is the burden of that Society to deal with them in all its phases, including the obligation to pay for the defense of an indigent accused of a crime. That she shares these feelings with members of the bar is evident from an edi-

torial which appeared in 86 N. J. L. J. 604, as far back as October 31, 1963, (26a, infra) "Defense of Indigents: Put the Responsibility Where It Belongs". At that time, throughout the State of New Jersey, counsel were assigned by the State Courts without remuneration for indigent defendants accused of indictable crimes, except that attorneys assigned to murder cases were paid.

C. The Birth of the Public Defender System and the Demise of Assignment System Under Rule 1:12-9

However, it was not until 1966 when the insistent clamor of the bar reached such intensity that it was heard in Trenton, New Jersey, that this problem came to a head. In the case of *State* v. *Rush*, 46 N. J. 399, the New Jersey Supreme Court, although denying compensation to an attorney because the court had not legislative power, nonetheless urged "a thorough policy and practical study and evaluation of our assigned counsel system in its entirety", a system that was then operating for about a dozen years under its Rule 1:12-9. The New Jersey Legislature made the recommended study, from which the Public Defender Act, N.J.S. 2A:158A et seq. (29a infra) emerged in 1967. Under its "section 1" defense of indigents was confined to those accused of indictable offenses. Those accused of lesser offenses were left to their own resources. Under its "section 2", an "indigent defendant" was defined as a person charged with an indictable offense without the present financial ability to secure competent legal representation.

Thus ended the assignment system under Rule 1:12-9.

D. How Court Proceedings Resuscitated The Assignment System

In 1971 the New Jersey Supreme Court rendered two decisions, *Rodriguez* v. *Rosenblatt* and *State* v. *Conley*, 58 N. J. 281 both holding that indigents at the municipal level accused of an offense which carried a penalty of possible imprisonment, were also entitled to legal representation. However, no provision was made for such counsel to be paid. Now the assignment system, repudiated and thought to be a dead letter for four years was retrieved, revived and reinstated at the municipal level.

Followed a directive from the Administrative Director of the Courts dated May 12, 1971 (16a, infra) which warned municipal judges that neither one of these opinions, the statutes nor the court rules, authorized the municipal court to compensate such assigned attorneys.

E. The Arbitrary Assignment of Petitioner and its Aftermath

On July 6, 1971, petitioner was given an arbitrary assignment by a municipal judge of the City of Paterson, to serve as unpaid counsel for an indigent defendant, a defendant whom she did not know, who didn't know her, who had been accused of being a disorderly person, which charge carried the possibility of imprisonment. In pursuance of her conscientious objections to the whole concept of the assignment system, she declined acceptance. She was summarily adjudged guilty of contempt of court and fined $50 and costs. The appeals and affirmances of conviction followed.

Petitioner now seeks to vindicate the supremacy of the Federal Constitution which has been abrogated by the State Courts by being ignored.

Argument Amplifying Reasons Relied Upon for Allowance of Writ of Certiorari

A. Background for Constitutional Powers Asserted

1. The cases discussing the obligation of an attorney to render free services by judicial request fall into two categories. It is significant that the earlier cases hold he has such an obligation while the later ones maintain he has not. 7 Am. Jur. 2d, Attorneys-at-law, sec. 207, p. 169, notes 2 to 9, and pocket parts.

Among the later cases, *Knox County Council* v. *State*, 217 Ind. 493, 29 N.E. 2nd 405, 407, 409, 410 (Sup. Ct. Ind. 1940) stands out. That case holds that the Sixth Amendment to the United States Constitution requires that an indigent defendant have the assistance of counsel for his defense; that at common law the gratuitous defense of a pauper was an honorary duty not enforceable at law. More recently, *Bradshaw* v. *Ball*, 41 L.W. 2190, —— Ky. Ct. App. 9-22-72, not yet officially reported, published in U. S. Law Week, October 17, 1972, holds that a Kentucky court's appointment of counsel to serve without fee in defense of an indigent accused of a crime constitutes a taking of private property without compensation, and is a denial of due process of law, in violation of both the United States and Kentucky Constitutions.

Prompt resolution of these conflicts and the important constitutional questions inherently involved is clearly called for by both the bar and the public.

2. Recently the United States Supreme Court itself upset a conviction where relief for violation of the federal constitutional right to counsel had been denied in Florida. The ground for such suit was that counsel for indigent defendants was furnished in Florida only for non-petty

offenses punishable by more than 6 months imprisonment. In a concurring opinion, Mr. Chief Justice Burger, quoting from the American Bar Association Report on Standards Relating to Providing Defense Services said:

> "'that the system for providing counsel and facilities for the defense be as good as the system which society provides for the prosecution.'"

Argersinger v. *Hamlin*, —— U.S. —— (1972), 32 L. Ed. 2d 530, 542, 92 S. Ct.

3. Freedom of contract, a legacy from the economic philosophy implicit in laissez-faire, urged by Adam Smith and others, is violated by the assignment system. Fourteenth Amendment to the Federal Constitution reflects this "freedom of contract" which is subject to the limitation only, relating to the "safety, health, morals and general welfare of the public". *Lochner* v. *New York*, 198 U.S. 45, 53 (1905). Nothing in this assignment system qualifies to take it out of the "freedom of contract" class. The assignment system is a harking back to feudal times when the lord of the manor could exact a share of the serf's produce and military services as a condition for remaining on the land.* The Thirteenth Amendment bars a return to that condition by the lawyers involved.

4. In New Jersey, at every stage of the law enforcement system, the police, the court attendants, the prosecutors, the public defenders, judges, jailers, etc., all without exception are being paid, without regard to the economic status of the defendant. The public defender representing an indigent for indictable offenses is likewise paid. Con-

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* Introduction to Economics (1919) by John Roscoe Turner, p. 15 et seq.

sidering the increase in petty, non-indictable offenses, (infra) which may result in imprisonment, equity demands that attorneys assigned in Municipal Court cases for defense of indigents should also be paid. This will also conform to federal practice where in recognition of these vital constitutional objections to enforced, gratuitous rendering of services by attorneys, the Federal Criminal Justice Act, amended by Congress in 1964, now provides for compensation for court-appointed attorneys who defend accused indigents in the federal courts. 18 U.S.C. Section 3006a.

5. The aforesaid judgment of conviction for alleged contempt obliquely conflicts with *State* v. *Rush*, 46 N.J. 99 (1966) which struck down the assignment system at the trial and appellate levels, for indictable offenses, when it adjudged that the Legislature must provide for payment to defense attorneys. By way of dicta, Rush held out the hope that the changing scene at the municipal level due to increased prosecutions for offenses which may result in imprisonment, could alter the situation and require the services of paid counsel. A table, "G-2", (25a, infra) indicates a drastic crime increase in such offenses before the New Jersey Municipal Courts, from 1965 to 1970.

	Criminal Complaints Filed		
		Increase	
Year	*Number*	*Nos.*	*%*
1965-1966	148,882		
1970-1971	222,175	72,293	50%

6. One of the statements made in the opinion of the Passaic County Court judge filed November 29, 1971, which was adopted by the Superior Court of New Jersey, Appellate Division, (3a, infra) is that as a condition of his license to practice law, an attorney has a common law

obligation to render gratuitous assistance, 11a, infra. Not so. The license itself makes no mention of such gratuitous assistance. The fact that the attorney has been licensed in consonance with established procedure, is not for the sake of rendering free services to the State, through representation of its indigents, but to protect the public against incompetent or dishonest practitioners. No other licensee of any profession is called upon to render gratuitous services. The lawyer stands apart in that respect. It is a tax levied upon him but not upon all other licensees—clearly a denial of due process and of the equal protection of the laws.

B. The Judicial Precedents

7. N.J.S.A. 2A:10-1 spells out the limits of the contempt power under which petitioner was convicted. While "obstruction" is not found within its ambit, Note 7 of the annotations refers to cases holding that it is "obstruction" that constitutes the contempt. "Obstruction" is the keystone of the crime of contempt. Remove this keystone and the arch crumbles. Nowheres was this obstruction shown to exist in the instant case, not in the transcript of the testimony in the Municipal Court, (19a, et seq. infra), nor in the "certification and order adjudging in contempt of court" (13a, infra).

In *Ex parte Hudgings,* 249 U. S. 378 (1919), the Supreme Court held that obstruction was a necessary element of the offense of contempt. "An obstruction to the performance of judicial duty resulting from an act done in the presence of the court is, then, the characteristic upon which the power to punish for contempt must rest." *Id.* at 383. Furthermore, obstruction "must clearly be shown", before punishment for contempt is permissible.

Nye v. *United States,* 313 U. S. 33 (1941) extrapolated this definition by holding that "long delay and large expense" would constitute obstruction. *Id.* at 52. *In re McConnell,* 370 U. S. 230 (1962), enlarged the holding in *Hudgings* by adding that the obstruction must be actual, not abstract or imagined (370 U. S. at 234-36). Moreover, obstruction must be clearly shown by the record *Id.* at 234. The near unanimity of the requirement of obstruction is further shown in *United States* v. *Sopher,* 347 F. 2d at 415, 418 (7th Cir. 1965) which held: "On the record before us it is not clearly shown that appellant's conduct although unjustifiable, actually obstructed the district judge in the performance of judicial duty." Obstruction and judicial sensibility must not be confused. *Brown* v. *United States,* 356 U. S. 148, 153 (1958).

Walker v. *Birmingham,* 388 U. S. 307 (1967), the only case cited by the Appellate Division of the New Jersey Superior Court in its opinion, (4a infra) has not the authority claimed for it, for holding petitioner in contempt. In *Walker,* petitioner's contempt proceedings were upheld because of the availability of review of the court's order at an earlier stage. Here there was no earlier stage and the instant petitioner has exhausted all available review. See, Note, 4, *U. S.* v. *Ryan,* 402 U. S. 530 (1971).

8. The New Jersey State courts failed to resolve the constitutional issue contained in the First Amendment to the United States Constitution, and to the petitioner's unfettered right to dissent from a judicial policy—a First Amendment right—which also contains the uncontroverted showing of injury to the indigent, from forced representation by unwilling counsel. Speaking, on a professional level, these injuries outweigh every other consideration, including the holding for contempt for not obeying a command of the court prejudicial to both counsel and the indigent.

If Spivak, in *Spivak* v. *Klein*, 385 U. S. 511 (1967) an alleged ambulance chaser, subpoenaed to produce documents and give testimony at a judicial inquiry into ambulance chasing, could resist the court and refuse on the constitutional ground of the Fifth Amendment (Self-incrimination) to produce his records, it would seem that petitioner has at least a like right to dissent on First Amendment grounds, to an assignment system fraught with injustice to the accused and with servitude to his assigned attorney.

9. The summary adjudication of guilt of contempt of court, so sweepingly decided by the courts below, did not consider the statute N.J.S. 2A:10-1(c) in its application to the petitioner.

Subdivision "(c)" of N.J.S. 2A:10-1 "by any court officer" has never been interpreted by any court in the State of New Jersey. In a comparable federal statute, 18 U.S.C. Sec. 401 (2), this Court held in *Cammer* v. *United States*, 350 U. S. 399 (1956) that an attorney is not "a court officer" within the meaning of the latter section.

10. The directive from the Administrative Director of the Courts, Appendix E (16a infra) requires that Municipal Court Judge in advance of assignment of counsel should determine whether conviction will result in imprisonment and whether defendant is indigent. There is no provision that the Court should determine that assigned counsel is versed in criminal matters.

Moreover, while directive sets out specifically that a prosecution attorney be available to represent the state or the municipality, and where none is available that the governing body be immediately advised of such need, there is no indication that the services of such prosecuting attorneys should be rendered gratis, as was required of defense attorneys.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for certiorari be granted.

Respectfully submitted,

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APPENDIX A

Denial of Certification by the New Jersey Supreme Court

SUPREME COURT OF NEW JERSEY

C-50 SEPTEMBER TERM 1972

ESTHER S. FRANKEL,

Plaintiff-Petitioner,

vs.

STATE OF NEW JERSEY,

Defendant-Respondent.

ON PETITION FOR CERTIORARI

TO APPELLATE DIVISION, SUPERIOR COURT:

A petition for certification having been submitted to this Court, and the Court having considered the same,

It is hereupon Ordered that the petition for certification is denied, with costs.

WITNESS the Honorable Joseph Weintraub, Chief Justice, at Trenton on the 21st day of September, 1972.

FLORENCE R. PESKOE
Acting Clerk of the Supreme Court

FILED

SEP 21 1972
FLORENCE R. PESKOE
Acting Clerk

APPENDIX B

Opinion of Superior Court of New Jersey—Appellate Division

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

A-873-71

STATE OF NEW JERSEY,

Plaintiff-Respondent,

IN THE MATTER OF THE CONTEMPT

of

ESTHER S. FRANKEL, An Attorney at Law of the State of New Jersey,

Defendant-Appellant.

Argued June 12, 1972—Decided June 27, 1972.

Before JUDGES SULLIVAN, LEONARD and CARTON.

On appeal from Passaic County Court, Criminal Division, whose opinion is reported in 117 N. J. Super. 296 (1971).

Mr. Leopold Frankel argued the cause for appellant (*Messrs. Frankel & Frankel*, attorneys).

Appendix B

Mr. John A. Brogan, Deputy Attorney General, argued the cause for plaintiff-respondent (*Mr. George F. Kugler, Jr.*, Attorney General of New Jersey, attorney).

PER CURIAM

Appellant Esther S. Frankel, an Attorney at Law of the State of New Jersey, was found guilty of contempt for wilfully refusing an assignment to represent an indigent defendant in a disorderly persons case in the Paterson Municipal Court.

On a trial *de novo* on the record in the County Court, the finding of contempt was sustained and further appeal is made to this court.

The issue is a narrow one. Appellant acknowledges that she was assigned to represent an indigent defendant in a municipal court proceeding and that she wilfully refused to accept the assignment. Her basic contention is that the present system of requiring attorneys to accept assignments to represent indigent defendants in municipal court cases without compensation is unlawful, immoral and unconstitutional. She argues that her refusal to accept the assignment was not shown to have obstructed justice, nor did it evidence an intent to do so.

We have reviewed the full record and are in accord with the legal conclusions set forth in the comprehensive opinion of the County Court and, except as hereinafter noted, adopt them as our own. The opinion is reported at 117 N. J. Super. 296. On the undisputed facts, we find that appellant's refusal to accept the assignment in question constituted a contempt of court in violation of N.J.S.A.

Appendix B

2A:10-1. We hold that the assignment and the system on which it was based was lawful and proper, and appellant was under a duty to accept it. Moreover, her challenge of the assignment should not have been by defying the court. *Walker* v. *City of Birmingham*, 388 U. S. 307 (1967). The proper procedure would have been either to seek leave to appeal from the order of assignment, or accept the same and apply for compensation thereafter.

In deciding this appeal we find it unnecessary to pass upon the trial court's dictum at p. 302 that "Any right to compensation is purely statutory."

We find appellant guilty of the contempt charged and fine her $50 and costs, payable to the Clerk of the Paterson Municipal Court.

A True Copy

Mortimer G. Newman
Clerk

APPENDIX C

Opinion of Passaic County Court

PASSAIC COUNTY COURT
LAW DIVISION

STATE OF NEW JERSEY

v.

JANET COREY

IN THE MATTER OF THE CONTEMPT

of

ESTHER S. FRANKEL, an Attorney at Law of the State of New Jersey

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Argued—November 19, 1971.

Decided—November 29, 1971.

Mr. Leopold Frankel argued the cause for appellant, Esther S. Frankel.

Mr. Sherman T. Brewer, Jr., Deputy Attorney General, argued the cause for the respondent (*Mr. George F. Kugler, Jr.*, Attorney General of New Jersey, attorney; *Mr. Elias Abelson*, Assistant Attorney General, of counsel; *Mr. Sherman T. Brewer, Jr.*, Deputy Attorney General, on the brief.

Appendix C

DUFFY, J.C.C.

This matter is before the court on the appeal of Esther S. Frankel, an Attorney at Law of the State of New Jersey, from an adjudication of contempt of court pursuant to N.J.S.A. 2A:10-1(c) and R. 1:10-1 entered on July 6, 1971, in the Municipal Court of the City of Paterson. The appellant was fined $50.00, payment of which was stayed by the Municipal Court pending the outcome of an appeal.

On July 6. 1971, one Janet Corey was charged with a violation of N.J.S.A. 2A:170-4. Upon interrogation of Janet Cory the court was unable to elicit any information from her and thereupon assigned the appellant as counsel. At this point the appellant refused to accept the assignment and expressly waived the opportunity for a 24 hour cooling-off period to reconsider her position as directed in *In re Logan, Jr.*, 52 N. J. 475 (1968). Thereupon, the appellant was adjudged guilty of contempt of court and fined $50.00.

Succinctly stated the issue on this *de novo* appeal on the transcript is "whether the refusal of an attorney to accept appointment as counsel for an indigent accused, defendant or appellant, . . . constitutes contempt of court" Annotation, "Attorney's Refusal To Accept Appointment To Defend Indigent, Or To Proceed In Such Defense, As Contempt." 36 A. L. R. 3d 1221 (1971).

On May 10. 1971, in the cases of *Rodriguez* v. *Rosenblatt* and *State* v. *Conley*, 58 N. J. 281 (1971) the Supreme Court decided at page 295 that,

> "Indeed, whenever the particular nature of the charge is such that imprisonment in fact or other consequence of magnitude is actually threatened or

is a likelihood on conviction, the indigent defendant should have counsel assigned to him unless he chooses to proceed *pro se* with his plea of guilty or his defense at trial. In those rare instances where there is a plea or a trial proceeds without any tender or assignment of counsel and actual imprisonment or other consequence of magnitude looms appropriate to the municipal judge despite the predications to the contrary, the defendant should be given the option of starting anew with suitable safeguards including where necessary [*sic*] trial before a substituted municipal judge."

On the basis of the above decision, on May 12, 1971, an administrative order was issued to all assignment and municipal court judges concerning assignment of counsel without compensation in municipal court for indigent defendants when the nature of the charge falls within the guidelines of the *Rodriguez* and *Conley* cases.

In short, the order called for establishment of a list of attorneys for each municipal court from which counsel could be assigned by the judges as necessity dictated. Until the list was prepared judges could assign counsel on an *ad hoc* basis. Furthermore, the order observed that no provision presently exists in the opinion, court rules, or statutes to authorize compensation for assigned counsel.

N.J.S.A. 2A:10-1 directs that, "The power of any court of this state to punish for contempt shall not be construed to extend to any case except the . . . (c) Disobedience or resistance by any court officer, or by any party, juror, witness or any person whatsoever to any lawful writ, process, judgment, order or command of the court."

Appendix C

The appellant alleges that the conviction for contempt was inappropriate because the refusal to accept the assignment did not result in an obstruction of justice.

In the case of *Powell* v. *Alabama*, 287 U.S. 45 (1932), a case involving the right to counsel, the court said at page 73, "Attorneys are officers of the court, and are bound to render service when required by such an appointment."

The act herein alleged to constitute contempt was the deliberate refusal of Esther Frankel to accept a defense appointment as directed by a lawful court order. "A contempt of court has been defined as a disobedience to the court by acting in opposition to its authority, justice and dignity. Generally speaking, he whose conduct tends to bring the authority and administration of the law into disrepute or disregard, interferes with or prejudices parties during litigation, or otherwise tends to impede, embarrass, or obstruct the court in the discharge of its duties is guilty of contempt." *In re Bozorth* 38 N.J. Super. 184, 188 (Ch. Div. 1955). Likewise, any willful violation of a court order may itself be contempt. *State* v. *Cary* 49 N.J. 343 (1967).

Unquestionably, Esther Frankel deliberately refused to accept assignment albeit with good motive thereby disrupting the court procedure. The refusal by the appellant obstructed justice in such a way that the court was prohibited from disposing of *State* v. *Janet Corey* with expedience and fairness to all concerned. One must estimate the frustration of the Supreme Court's will as enunciated in *Rodriguez* and *Conley* if all attorneys could deliberately refuse an assignment.

Doubt of the validity of an order is no justification for noncompliance unless the court issuing it was in fact with-

out jurisdiction. *Salmom* v. *Salmom* 88 N.J. Super. 291 (A. D. 1965). Resistance in the face of a court order to act as counsel without compensation was not the means to test the validity of the order. "If the person to whom a court order is directed wishes to test its validity before complying with it, the appellate courts are open to him. Otherwise, he must obey it. No other rule is compatible either with the dignity of the courts or the effective prosecution of their business." *Roselle* v. *Moonachie* 48 N.J. Super. 17, 25 (App. Div. 1957). Rather than refuse assignment and obstruct justice the appellant could after representing the indigent raise the issue of compensation by an application to the court as was done in *State* v. *Rush* 46 N.J. 399 (1966) and *State in Interest of Anthony Antini, Jr.* 53 N.J. 488 (1969).

Notwithstanding the desire of the appellant to formulate a "test case" her motivation does not excuse a deliberate contempt of court. *In the case of In re Carton* 48 N.J. 9 (1966) an attorney was held in contempt for refusal to obey a court direction to sign a pretrial order. The court said at page 25, "Good motive does not excuse a willful disobedience, but it may be considered in deciding whether a public purpose would be served by a prosecution for contempt." See also *In re: William Brown, Jr.* 50 N.J. 435 (1967).

Next, the appellant alleges that the assignment of counsel in municipal court without compensation violates the constitutional rights of an attorney. In particular the appellant asserts the violation of her First Amendment right to dissent, her Thirteenth Amendment freedom from involuntary servitude and her Fifth and Fourteenth Amendment prohibitions against taking of property without due process of law or adequate compensation.

Appendix C

In *Gideon* v. *Wainwright* 372 U.S. 335 (1963) the United States Supreme Court found that the Federal Constitution requires the State to furnish counsel to an indigent accused of crime. "The majority of the courts faced with the issue have held that in the absence of statutes, an attorney appointed by the court to represent an indigent accused has no right to compensation by the public, and such denial does not violate any provision of the Federal Constitution." Annotation, "Right of Attorney Appointed By Court For Indigent Accused To And Court's Power To Award Compensation By Public. In absence of Statute or Court Rule" 21 A.L.R. 3d 819, 821 (1968).

Since *Gideon* the constitutional right to counsel has been extended to indigent juveniles when the possibility of commitment exists. *In re Gault* 387 U.S. 1 (1967). Whether or not a constitutional right to counsel in petty offenses exists has never been decided by the United States Supreme Court or the New Jersey Supreme Court. See *In re Garofone* 42 N.J. 244 (1964).

In New Jersey prior to *State* v. *Rush*, supra, attorneys only received compensation in murder cases. N.J.S.A. 2A: 163-1. Basing its decision on N.J.S.A. 2A:158-7 the Court in *Rush* held that the bar would no longer absorb the full cost of defense of the indigent and directed that reasonable compensation be paid by each county to assigned attorneys. Later, in 1969, the Supreme Court extended compensation to attorneys for indigent juveniles reasoning that since *In re Gault, supra*, the obligation to furnish counsel to the indigent juvenile in danger of commitment has become a constitutional and public one to be covered by the Public Defender. *State in Interest of Anthony Antini, Jr., supra.*

Appendix C

In the case of *Rodriguez* v. *Rosenblatt* and *State* v. *Conley, supra,* the Court found, not as a constitutional right, "but as a matter of simple justice, no indigent defendant should be subjected to a conviction entailing imprisonment in fact or other consequences of magnitude without first having had due and fair opportunity to have counsel assigned without cost." 58 N.J. at page 295.

The identical issues are raised herein alleging a violation of the constitutional rights of a lawyer were answered in the negative in *U.S.* v. *Dillon* 346 F.2d 633 (9th Cir. 1965) and *Dolan* v. *U. S.* 351 F.2d 671 (5th Cir. 1965).

Any right to compensation is purely statutory and a system of compensation for appointed counsel, in the light of the developing law of the rights of indigents, is a matter for legislative not judicial treatment. *U. S.* v. *Dillon, supra.* At present in New Jersey no statute or court rule exists which can be cited as authority for directing compensation to attorneys assigned in municipal court. Thus, the attorney must render gratuitous assistance pursuant to his common law obligation and tradition as an officer of the court and as a condition of his license to practice law. *State* v. *Horton,* 34 N.J. 522 (1961), *State* v. *Clifton* 247 La. 495 172 So. 2d 657 (1965), *Warmer* v. *Commonwealth* 400 S.W.2d 209 (Ky. 1966), cert. denied 385 U.S. 858 (1966), *Jackson* v. *State* 413 P.2d 488 (Alaska, 1966), *Weiner* v. *Fulton County* 113 Ga. App. 343 148 S.E.2d 143 (1966), *Ruckenbrod* v. *Mullins* 102 Ut. 548, 133 P.2d 325 (1943), Annotation, "Construction of State Statutes Providing For Compensation Of Attorney For Services Under Appointment By Court In Defending Indigent Accused" 18 A.L.R. 3d 1074 (1968).

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As in the case of *State* v. *Rush*, supra, the duty of gratuitous service in municipal court may become too burdensome for the bar to endure without compensation. In the last paragraph of its opinion the Supreme Court in *State in Interest of Anthony Antini, Jr., supra,* at page 495, stated, "With regard to assignments in cases of non-indictable offenses in the local criminal courts, there is no demonstration that presently their burden upon the bar is unreasonable or is likely to become so in the near future. If it should, this court is available to act." Whether or not the public treasury should not be compelled to compensate attorneys for service in non-indictable offenses cannot now be ascertained and the sources of such payment should be left to the legislative fact-finding process. See the considerations voiced by the court in *Warner* v. *Commonwealth, supra,* at page 211.

After a careful reading of the transcript and consideration of the oral argument and the briefs submitted by both parties, the court finds there was probable cause for the charge and that appellant's conduct on July 6, 1971, constituted a contempt of court in violation of N.J.S.A. 2A:10-1 and R. 1:10-1. Therefore, this court is constrained to affirm the judgment of the Municipal Court, City of Paterson, in the above matter.

APPENDIX D

Certification and Order of Municipal Court of the City of Paterson Adjudging Petitioner in Contempt of Court

MUNICIPAL COURT OF THE CITY OF PATERSON

Docket No. C-4141

Folio No. 104

THE STATE

vs.

JANET COREY,

Defendant

In the matter of the Contempt of Esther S. Frankel, an Attorney at Law of the State of New Jersey

---

It appearing that on July 6, 1971 the defendant, Janet Corey of Forest Avenue, Yarmouth, Maine was charged with a violation of N.J.S. 2A:170-4 and it further appearing that the said Janet Corey was homeless and indigent on her Arraignment and that Esther S. Frankel, an Attorney at Law of the State of New Jersey, was assigned as Counsel for the above indigent defendant pursuant to the decisions in such cases made and provided, and further pursuant to the instructions contained in a letter

Appendix D

"Assignment of Counsel in Municipal Courts" dated May 12, 1971 issued by Edward B. McConnell, Administrative Director of the Courts, which directives were prescribed within the doctrine as set forth in *Rodriguez* v. *Rosenblatt* and *State* v. *Conley*, decided May 10, 1971 by the New Jersey Supreme Court and that the said Esther S. Frankel did willfully and deliberately refuse to accept said assignment saying "I am not accepting the assignment . . ." "I refuse" and that the said Esther S. Frankel further stated that she is against "compulsory assignments" and further all public agencies receive compensation for their services including the Courts, the police and prosecutors, and it further appearing that the said Esther S. Frankel was given ample opportunity to be heard why an Order adjudging her in Contempt should not be entered and that the said Esther S. Frankel indicated that she did not need an opportunity to reconsider her position but that in fact she again refused to accept the assignment saying "I am doing it as a matter of principle" and the Court finding nothing in said explanation either in extenuation or mitigation why an Order adjudging her Guilty of Contempt should not be entered;

IT IS ON THIS 6th day of July, 1971 ORDERED that Esther S. Frankel be adjudged Guilty of Contempt within the purview of N.J.S. 2A:10-1(c) and Rule 1:10-1.

IT IS FURTHER ORDERED that the said Esther S. Frankel pay to the Clerk of this Court the sum of $50.00 fine.

IT IS FURTHER ORDERED, upon the request of the said Esther S. Frankel, that the payment of said fine be stayed pending prompt appeal of this Order by the said Esther S. Frankel to the Passaic County Court or higher court.

A Stenographic Transcript of these proceedings was made.

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Attached hereto and made a part hereof is the Letter of the said Edward B. McConnell, Administrative Director of the Courts.

ERVAN F. KUSHNER
Presiding Judge

CERTIFICATE

I certify that by this Order that I saw and heard the above recited conduct constituting the within Contempt and that the said Contempt was committed in the actual presence of this Court and this Judge.

ERVAN F. KUSHNER
Presiding Judge

APPENDIX E

Directive of Administrative Director of Courts Re: Assignment of Counsel in Municipal Courts Dated May 12, 1971

ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY

EDWARD B. McCONNELL
ADMINISTRATIVE DIRECTOR

STATE HOUSE ANNEX
TRENTON
NEW JERSEY
08625
13-70

May 12, 1971

MEMORANDUM TO: ALL ASSIGNMENT JUDGES AND MUNICIPAL COURT JUDGES

Re: Assignment of Counsel in Municipal Courts

1. Attached is a copy of the New Jersey Supreme Court's opinion in *Rodriguez* v. *Rosenblatt* and *State* v. *Conley*, decided May 10, 1971. As a result of this decision it is now mandatory that "whenever the particular nature of the charge is such that imprisonment in fact or other consequence of magnitude is actually threatened or is a likelihood on conviction, the indigent defendant should have counsel assigned to him unless he chooses to proceed *pro se* with his plea of guilty or his defense at trial." Note also that (a) "the substantial loss of driving privileges" is considered to be a consequence requiring the assignment of counsel; (b) that counsel is to be assigned

without cost to the indigent defendant; and (c) if a trial proceeds without counsel and it subsequently appears that counsel should have been assigned, "the defendant should be given the option of starting anew with suitable safeguards including, where necessary, trial before a substituted municipal judge."

2. It is imperative that this decision be implemented immediately. To this end each Assignment Judge, in conjunction with the Municipal Court judges in his county or counties, should establish a list or panel of attorneys for each Municipal Court from which list the Municipal Court judges shall then make assignments of counsel as required by this decision. Until such lists or panels are prepared, it will be essential for each Municipal Court judge to assign counsel on an *ad hoc* basis. Director Carl F. Bianchi, State Office of Legal Services, is requesting legal service offices throughout the State to continue temporarily to represent indigent defendants in the Municipal Courts until such lists and panels can be prepared, which certainly should be no later than the end of May. Thereafter representation by legal service offices in such cases cannot be expected, since they are not authorized to provide legal services where such services are otherwise required by law (i.e. this decision) to be furnished. As such lists or panels are established, please send a copy thereof to this office.

3. Each Municipal Court judge should immediately establish an appropriate screening procedure to ascertain in advance of trial: (a) whether the charge made in the complaint is likely to result, in the event of conviction, in imprisonment or other consequence of magnitude; and

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(b) whether the defendant is indigent. In determining indigency the court should consider the fee ordinarily charged by attorneys to handle such cases. It might be noted here that there is no provision, either in this opinion, the court rules, or the statutes, which presently authorizes a court to compensate assigned counsel in these cases.

4. Since this decision will result in an increase in the number of Municipal Court cases in which the defendant is represented by counsel, it becomes even more important that a prosecuting attorney be available to represent the State or the municipality, as the case may be. In those municipalities where a municipal court prosecutor is not now available it is recommended that the Assignment Judge and the Municipal Court judge advise the governing body of the increased need therefor.

5. Municipal Court judges encountering any special problems in implementing this decision are requested to notify their Assignment Judge and the Administrative Office.

EDWARD B. MCCONNELL
Administrative Director of the Courts

APPENDIX F

Stenographic Transcript of Testimony Taken in the Municipal Court of the City of Paterson

MUNICIPAL COURT OF THE CITY OF PATERSON

DOCKET NO. 4141, FOLIO NO. 104

IN THE MATTER OF CONTEMPT OF COURT

of

ESTHER S. FRANKEL, An Attorney at Law of the STATE OF NEW JERSEY

STENOGRAPHIC TRANSCRIPT OF TESTIMONY

Before:

ERVAN F. KUSHNER, Presiding Judge
Municipal Court of the City of Paterson
Paterson, New Jersey.

July 6, 1971

Appearances:

ESTHER S. FRANKEL

Clerk; Janet Corey? You have been charged with, on the 5th day of July, 1971, in the City of Paterson, that

you did wander abroad and lodge unlawfully in a public or private place to which property of Mr. Kay of 280 E. 28th Street, City, sleeping on the lawn, and you did not give a good account of yourself.

Court: Well, now, she can't be held with that, she doesn't have to. But, where do you come from, young lady?

Janet Corey: Well . . .

Court: Well, where do you live?

Janet Corey: No where.

Court: No where? No address?

Janet Corey: No.

Court: Then she comes within the Common Law rule. How do you plead to this charge?

Janet Corey: Nothing.

Court: I'll assign Esther S. Frankel, 455 East 42nd Street, off the list. Miss Frankel, step forward. Miss Frankel, under the recent Supreme Court rule you are on the alphabetical list here. We will assign you to this case. When would it be convenient for you to be ready? It is obvious the girl needs a little bit of feminine conversation.

Miss Frankel: Your Honor, with all due respect to the Court and to the rules, I am not accepting the assignment.

Court: You refuse?

Miss Frankel: I refuse to accept the assignment. I have helped people, but I think it should be on a voluntary basis and I don't think that these assignments should be made on a peremptory manner.

Court: You understand that I have no control over it? That is the result of a Supreme Court decision?

Miss Frankel: I understand, your Honor. The United States Supreme Court has ruled that everybody is entitled to an attorney.

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Court: Right.

Miss Frankel: And I am in whole-hearted agreement with that ruling. But I don't think that the prosecuting office, the police, the Courts, the defense counsel under the public defender system are all paid and that any attorney should be assigned on a compulsory, arbitrary basis.

Court: You understand that you are about to make a test case of this, Miss Frankel.

Miss Frankel: I do, your Honor.

Court: You understand further that Justice Jacobs, in a unanimous opinion I think in State vs. DeDonis, said that every member of the Bar must take their turn without fee in these disorderly persons offenses. I ask you now—do you refuse to accept my order? Yes or no.

Miss Frankel: The answer is yes, your Honor.

Court: I will give you until tomorrow morning to reconsider your position, and you will appear here tomorrow morning at 9:00 o'clock. I must tell you now, if you disobey the order of the New Jersey Supreme Court, of which I am the agent, I will tell you now I shall hold you in Contempt of Court and punish you accordingly. Because you have been a member of the Bar for a long period of time, I want to give you 24 hours to reconsider your position.

Miss Frankel: Your Honor . . .

Court: You show the Docket entry under the case of Janet Corey, that in addition (Esther Frankel) on a proceeding to hold her in Contempt of Court. I want to give you plenty of time to think about it.

Miss Frankel: Your Honor, I appreciate your consideration . . .

Court: I know it.

Miss Frankel: . . . and I want you to do . . .

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Court: You're doing it as a matter of principle.

Miss Frankel: Exactly.

Court: I appreciate that, Mrs. Frankel, but you are ordered to do it.

Miss Frankel: Very well, your Honor.

Court: And if you want the 24-hour period of time, I shall give it to you.

Miss Frankel: Your Honor, I have given much thought to this. If your Honor wants to devote the 24 hour period it's quite all right with me. I am taking this stand on principle, and I think it should be tested in the Courts.

Court: Very well. It is the sentence and judgment of the Court—you now waive, I understand, any waiting period within the Supreme Court case of State vs. Haines, is that correct?

Miss Frankel: That's correct, your Honor.

Court: And you concede that I have advised you of your rights fully and properly.

Miss Frankel: You certainly have, your Honor.

Court: I fine you $50.00 fine for Contempt of Court, the sentence to be stayed until the culmination of your duties here this morning.

Miss Frankel: Your Honor, may I ask for a stay of execution to enable me to appeal this?

Court: No. The stay shall not be granted. You are in contempt and will pay the fine this morning. You may sit down, Miss Frankel.

Court: Miss Frankel, step forward please. I understand you are ready to pay the fine in which you were judged in contempt. Now, let me ask you this question. Assume that I suspend the payment of the fine, can you tell me if you will forthwith take an appeal?

Miss Frankel: Promptly.

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Court: All right. Now here's—I would suggest you do this way. I'll serve upon you a judgment of conviction, probably tomorrow morning, and then I want you promptly to take an appeal. Now let me give you further guidance, if I might. You have known me many years. I would suggest that once you file your notice of appeal, you, for immediate certification . . .

Miss Frankel: You mean to the Supreme Court?

Court: I would suggest either to the Appellate Division or the Supreme Court. I want you to make a test case out of it.

Miss Frankel: Very good.

Court: Make a note of that. And further, I want you to rely on two cases—or at least to go in on two cases. I think it's Rodriguez vs. Rodriguez or Rodriguez vs. Rosenbloom, and I think it's State vs. Conley. I want you also to research and (sounds like) shepherdize State vs. Haines. You know that case.

Miss Frankel: Yes.

Court: Now, you have conceded . . . I dont' want to fall into the error of the State vs. Haines case where the Judge did not give the lawyer sufficient time to reconsider their position. Now, you've conceded you've been given sufficient time.

Miss Frankel: I have been given it, and I appreciate your Honor's consideration, and I can only state that you have given me every courtesy and consideration (indiscernible).

Court: Well, you've said that about me for fifteen years, Esther.

Miss Frankel: At least.

Court: At least. All right. Now, the next thing is I want you to get your Appeal papers going very, very promptly.

Miss Frankel: I shall.

Court: I want you further—I think, because it's very important Miss Frankel—I want you to find out whether or not that the Passaic County Bar Association should not be a party to the action, and as to whether or not the New Jersey State Bar Association should not be a party to the action. Have you got that?

Miss Frankel: Yes.

Court: All right. Now, therefore on Index Counter reading No. 014 of Tape No. 204, I now direct as follows that you are fined $50 fine for Contempt of Court, $25 cost, and I suspend the sentence and the cost until the final adjudication of the case. Is that clear?

Miss Frankel: Yes. It's perfectly clear.

Court: And then, at the final determination, you will surrender yourself to the jurisdiction of this Court, if necessary.

Miss Frankel: Very well.

Court: Good morning.

Miss Frankel: But I'll get a copy of the Contempt.

Court: Oh sure. And then what you've got to do further is you have to send us a check for $35 to order a transcript of the proceedings, and that can be done in a few days.

Miss Frankel: Yes, your Honor. Thank you.

APPENDIX G

Table "G-2"—Statistics Showing Increase in Crime in the Municipal Courts

[PHOTOSTATS]

(Opposite) ☞

TABLE G-2
(Formerly Table I)
PROCEEDINGS IN THE MUNICIPAL COURTS (1)
Traffic Cases (Non-Parking), Parking Cases, and Criminal Cases
September 1, 1955 to August 31, 1956

Municipal Court and Name of Judge	Hours on Bench (Reported Monthly to Nearest Hour)	Notices in Lieu of Complaints Heard (Informal) (2)	Number of Complaints Filed	Referred to Grand Jury, R. & Dom. Rel. Ct., etc. for Disposition	Dismissals and Findings of Not Guilty	Violations Bureau Cases (Defendants Signing Guilty Plea and Trial Waiver)	Convictions in Court & Pleas of Guilty Not Including Violations Bureau	Total Fines Court Costs, and Forfeitures of Bail (All Cases - Court and Violations Bureau)	Persons Committed to Jail in Lieu of Payment of Fines	Persons Sentenced to Jail (Not Including Commitments in Lieu of Fines)	Persons Placed on Probation	Drivers' Licenses Revoked or Suspended by the Court	Sentences Suspended	Failure to Appear Cases "Closed" (3) After Follow-up per Rule 8:10-3	
														Residents of N.J.	Non-Residents of N.J.
PASSAIC COUNTY (Continued)															
HALEDON BOROUGH															
VINCENT A PERNETTI															
TRAF	29		232		24	568	423	$ 14,403	1			4	3	5	
PARK			38		5	30	1	$ 265						1	
CRIM	24		76	6	23		29	$ 920	1	1			3		
TOTAL	53		346	6	52	598	453	$ 15,588	2	1		4	6	6	
HAWTHORNE BOROUGH															
PETER CALCIA															
TRAF	68		448	5	61	144	283	$ 7,322	3	1	1	9	36	4	
PARK	9		307		7	196	112	$ 1,104					9	4	2
CRIM	25	10	82	17	14		44	$ 1,484		2			10		
TOTAL	102	10	837	22	82	340	439	$ 9,910	3	3	1	9	55	8	2
LITTLE FALLS TOWNSHIP															
C EVAN DANIELS															
TRAF	94		1365	3	32	902	376	$ 33,709	2			41	2	32	28
PARK	13		674		2	575	44	$ 1,952					1	4	
CRIM	52	3	85	29	35		19	$ 970	1		1		5		
TOTAL	159	3	2154	32	69	1477	439	$ 36,641	3		1	41	8	36	28
NORTH HALEDON BOROUGH															
VINCENT A PERNETTI															
TRAF	30		112		14	48	53	$ 1,696	1			3		2	
PARK	4		104		4	94	2	$ 392						2	1
CRIM	16		102	17	6	61	17	$ 982		2					
TOTAL	50		318	17	24	203	72	$ 3,070	1	2		3		4	1
PASSAIC CITY															
PERRY A LAKS															
TRAF	322		1334	9	128	290	669	$ 24,821	31	6	2	17	11	271	3
PARK	27		38574		241	32796	172	$ 63,648					73	897	551
CRIM	862	272	1499	316	259		791	$ 20,368	37	141	56	4	95		
TOTAL	1211	272	41407	325	627	33086	1632	$ 108,837	68	147	58	21	179	1168	554
PATERSON CITY															
CHARLES J APAO															
TRAF	472		10326	1	1337	4644	4423	$ 142,747	275	5		106	77	256	16
PARK	325		107473		1925	66754	11455	$ 207,016	131				1338	913	
CRIM	572	278	7973	953	1918		4513	$ 81,076	737	820		55	760		
TOTAL	1369	278	125772	954	5180	71400	20401	$ 430,839	1143	825		161	2175	1179	16
PEMPTON LAKES BOROUGH															
JAMES F DOUGHERTY															
TRAF	72		335		23	140	180	$ 7,371	3			6		2	
PARK	7		241		4	200	28	$ 784					2	6	2
CRIM	45		133	20	34	3	75	$ 2,760	1	1	3	1	3		
TOTAL	124		709	20	61	343	283	$ 10,915	4	1	3	7	5	8	2
PROSPECT PARK BOROUGH															
VINCENT A PERNETTI															
TRAF	25		174		13	93	42	$ 1,790							
PARK	9		197		4	174	8	$ 856	1						
CRIM	21		25	6	6		14	$ 230		2	2		4		
TOTAL	55		396	6	23	267	64	$ 2,876	1	2	2		4		
RINGWOOD BOROUGH															
EDWARD V ZIMMERMAN															
TRAF	71		642		56	289	224	$ 9,859	3			40	3	4	1
PARK			33			26	1	$ 81							
CRIM	54	2	221	4	37	62	89	$ 2,813	2	4	3		7		
TOTAL	125	2	896	4	93	377	314	$ 12,753	5	4	3	40	10	4	1

COPY PRINTED CLOSE TO EDGE

TABLE G-2
(Formerly Table I)
PROCEEDINGS IN THE MUNICIPAL COURTS [1]
Traffic Cases (Non-Parking), Parking Cases, and Criminal Cases
September 1, 1965 to August 31, 1966

MUNICIPAL COURT AND NAME OF JUDGE	HOURS ON BENCH (REPORTED MONTHLY TO NEAREST HOUR)	NOTICES IN LIEU OF COM. PLAINTS HEARD (INFORMAL) (2)	NUMBER OF COMPLAINTS FILED	REFERRED TO GRAND JURY, JUV. & DOM. REL. CT., ETC. FOR DISPOSITION	DISMISSALS AND FINDINGS OF NOT GUILTY	VIOLATIONS BUREAU CASES (DEFENDANTS SIGNING GUILTY PLEA AND TRIAL WAIVER)	CONVICTIONS IN COURT & PLEAS OF GUILTY (NOT INCLUDING VIOLATIONS BUREAU)	TOTAL FINES COURT COSTS AND FORFEITURES OF BAIL (ALL CASES - COURT AND VIOLATIONS BUREAU)	PERSONS COMMITTED TO JAIL IN LIEU OF PAYMENT OF FINES	PERSONS SENTENCED TO JAIL (NOT INCLUDING COM. OFFENSES IN LIEU OF FINES)	PERSONS PLACED ON PROBATION	DRIVERS' LICENSES REVOKED OR SUSPENDED BY THE COURT	SENTENCES SUSPENDED	FAILURE TO APPEAR CASES CLOSED (3) AFTER FOLLOW UP PER RULE 8:10-3	
														RESIDENTS OF N.J.	NON-RESIDENTS OF N.J.
WARREN COUNTY (Concluded)															
PEMBERTON TWP HERMAN A HARMS															
TRAF	49		326		16	199	69	$ 4,070			1			5	3
PARK			37		5	44	14	$ 923						2	2
CRIM	12		19	2	2	5	14	$ 435		1	6		1		
TOTAL	61		384	2	23	248	98	$ 5,428		1	6	1	1	7	5
WASHINGTON BOROUGH GEORGE FLEMING															
TRAF	102		685		39	171	348	$ 11,277	2	1		14		37	11
PARK	76		1064		110	532	477	$ 1,624						107	14
CRIM	38		96	5	24		47	$ 1,178		1	2		6		
TOTAL	216		1845	5	173	703	872	$ 14,079	2	2	2	14	6	144	27
WHITE TOWNSHIP FREDERICK G SUNDERLIN															
TRAF	51		392		14	226	150	$ 7,141	1	2		4	1	9	30
PARK								$							
CRIM	6	13	22	1	1	6	8	$ 455					1		
TOTAL	57	13	414	1	15	232	158	$ 7,596	1	2		4	2	9	30
WARREN COUNTY DISTRICT COURT PARKER BRY WILDSEY, PRESIDING															
TRAF	27		479		22	233	193	$ 7,724	2	3		10		5	12
PARK			4			6	1	$ 51				3			
CRIM	22		127	28	32	39	36	$ 2,511	1	3	5	2	1		
TOTAL	49		610	28	54	278	230	$ 10,286	3	6	5	15	1	5	12
WARREN COUNTY			TOTAL												
TRAF	721		6180	5	303	3144	2250	$ 105,705	42	12	1	111	13	100	161
PARK	90		3990		195	2970	515	$ 7,856				3		163	73
CRIM	328	38	1085	119	207	93	546	$ 17,597	10	69	73	4	88		
TOTAL	1139	38	11255	124	705	6207	3311	$ 131,168	52	81	74	118	101	263	234
NEW JERSEY STATE TOTAL															
TRAF	42905		615962	615	35521	354123	87870	$ 9,851,757	5375	685	188	12,459	10,503	17,552	17,153
PARK	4551		1563766	129	38006	1233229	81783	$ 4,063,700	1170	65	15	28	15,584	69,240	31,627
CRIM	32517	14995	148282	10988	36588	6707	77647	$ 2,281,506	6419	1344	5640	517	13144		
TOTAL	85373	14995	2328610	20732	108117	1594059	247300	$16,196,961	12964	14094	5843	13504	39331	85798	48580

Source: Monthly Municipal Court Reports

(1) Includes proceedings in the County District Courts, for cases arising in municipalities in which there are no municipal courts. Also includes proceedings in Palisades Interstate Park Police Court.

(2) "Where the offense charged may constitute a neighborhood or domestic dispute, but may not violate any statute or ordinance, a notice may issue to the person or persons charged, requesting their appearance in order to determine whether or not a complaint should issue." Not applicable in traffic cases.

(3) Appropriate follow-up procedure is provided for by Rule 8:10-3, as amended.

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Table G-2

PROCEDURES IN THE MUNICIPAL COURTS[1]

Traffic Cases, Other Cases, Parking Cases, and Criminal Cases

September 1, 1969 to August 31, 1970

MUNICIPAL COURT AND KIND OF CASE	DISPOSITION BY TRIAL	DISPOSITION BY PLEA OF GUILTY	NUMBER OF COMPLAINTS FILED	NUMBER DISMISSED FOR WANT OF PROSECUTION, ETC.	NUMBER FOUND NOT GUILTY BY COURT	NUMBER FOUND GUILTY	CONVICTIONS RATE (PERCENT OF CASES DISPOSED OF BY TRIAL)	TOTAL FINES COURT COSTS AND/OR FORFEITURES IMPOSED	PERSONS SENTENCED TO PAY FINE OR PAYMENT	PERSONS SENTENCED TO JAIL OR REFORMATORY	PERSONS PLACED ON PROBATION	DRIVERS LICENSES REVOKED OR SUSPENDED BY THE COURT	SENTENCES SUSPENDED	FAILURE TO APPEAR CASES DISPOSED AFTER FAILURE TO APPEAR: RESIDENTS OF N. J.	FAILURE TO APPEAR CASES DISPOSED AFTER FAILURE TO APPEAR: NON-RESIDENTS OF N. J.
PASSAIC CITY															
AUTOMOBILE TERMINAL															
BOARD OF ALDERMEN															
TRAF	21		253		23	122	103	$ 4,893	2	1		1			
PARK	6		443		5	403	9	$ 1,512							
CRIM	17	12	109	8	43	2	51	$ 1,375	2	3	2	2	7		
TOTAL	44	12	810	8	63	532	163	$ 7,725	4	4	2	3	7		
CLIFTON CITY															
MUNICIPAL COURT															
TRAF	238		5773	9	435	7310	100.0	$ 129,450	23	6		129	135	1294	671
PARK	12		9720		105	9214	100.0	$ 45,851	1	1			63	493	11
CRIM	223	55	1716	191	473		82.5	$ 19,596	13	82	29	9	110		
TOTAL	423	55	22197	200	1013	16526	100.0	$ 194,427	43	55	29	138	308	1787	682
PATERSON CITY															
MUNICIPAL COURT															
TRAF	42		423	5	42	203	191	$ 7,427	1	4		16		12	
PARK			713		16	403	3	$ 2,724					1		
CRIM	32		132	21	35	32	52	$ 1,420		3	7		9		
TOTAL	81		1264	26	91	830	246	$ 11,571	1	7	7	16	10	12	
NORTH HALEDON TOWNSHIP															
PERTH AMBOY															
TRAF	84		752	3	42	209	393	$ 11,966	2	1		23	27		
PARK	1		737		3	563	17	$ 2,256					1		
CRIM	59	10	115	24	33		93	$ 4,892	2	7	2		13		
TOTAL	144	10	1672	27	89	772	503	$ 19,114	4	8	2	23	41		
PERTH AMBOY															
PERTH AMBOY															
TRAF	56		2078	1	63	1522	341	$ 54,337	2			18	3	57	37
PARK	12		855		14	556	31	$ 2,849					2	26	2
CRIM	35	2	102	23	15		88	$ 4,377	2	1	10	4	10		
TOTAL	103	2	2633	24	97	2078	460	$ 61,532	4	1	10	22	15	83	39
NORTH PLAINFIELD BOROUGH															
PLAINFIELD															
TRAF	47		475		27	325	114	$ 3,068				12	4	1	2
PARK	8		211		12	186	5	$ 783					2	2	1
CRIM	22	10	65	17	12	15	34	$ 1,080			1	1	2		
TOTAL	77	10	751	17	51	526	155	$ 8,891			1	13	6	3	3
PASSAIC CITY															
DOMINICK GIORDANO															
TRAF	132		2129	18	192	359	937	$ 37,503	19	7		48	69	38	
PARK	28		53270		254	43207	76	$ 139,510					117	1755	77
CRIM	504	24	3748	774	915		644	$ 38,945	27	117	149	6	254		
TOTAL	655	24	59147	792	1372	43566	2719	$ 215,958	46	124	149	54	431	1793	77
PATERSON CITY															
ERWIN R. RUSHER AND HUGH [illegible]															
TRAF	356		6146	15	792	2783	3481	$ 173,486	205	8		214	4	481	67
PARK	117		102547		4246	53274	8216	$ 167,079	29				89	2303	5
CRIM	513	44	7294	1858	2232		3475	$ 103,072	847	440	44	106	836		
TOTAL	986	44	115987	1873	7270	56057	13972	$ 443,617	881	448	44	320	929	2784	72
PERTH AMBOY															
HENRY ARCOLEIO															
TRAF	31		552		55	333	21[illegible]	14,429				17		10	
PARK			603		11	567	19	$ 2,462		5				4	4
CRIM	33		276	11	84	122	50	$ 3,095		7	5	1	14		
TOTAL	74		1431	19	170	933	293	$ 19,987		12	5	18	14	14	4

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TABLE G-7

PROCEEDINGS IN THE MUNICIPAL COURTS[1]

Traffic Cases (Non-Parking), Parking Cases, and Criminal Cases

September 1, 1969 to August 31, 1970

Municipal Court and Name of Judge	Arrest on Place Requested Waiting to Arrest Home	Notices in Lieu of Complaint Issued Immediately in Court[2]	Number of Complaints Filed	Referred to Grand Jury, Juv. & Dom. Rel. Ct., etc. for Disposition	Dismissals and Findings of Not Guilty	Withdrawn Pursuant to Agreement Defendant Pleads Guilty & Waived	Convictions in Court & Pleas of Guilty Not Including Violations Bureau	Total Fines, Court Costs, and Forfeitures of Bail (All Cases - Court and Violations Bureau)	Persons Committed to Jail in Lieu of Payment of Fines	Persons Sentenced to Jail, Not Including Commitments in Lieu of Fines	Persons Placed on Probation	Driver Licenses Revoked or Suspended by the Court	Sentences Suspended	Failure to Appear Cases "Closed" After Notice[3]	
														Residents of N. J.	Non-Residents of N. J.
WARREN COUNTY (Concluded)															
WASHINGTON BOROUGH															
FREDERICK R PRICE JR															
TRAF	108		787		32	348	297	$ 13,915		3		16	2	9	7
PARK	12		1734		116	1631	39	$ 2,595						6	29
CRIM	60	7	183	29	63		75	$ 2,925		2	1		12		
TOTAL	180	7	2704	29	211	1979	411	$ 19,435		5	1	16	14	15	36
WHITE TOWNSHIP															
JOSEPH G HOUSTON															
TRAF	46		452		20	206	187	$ 7,510	2			10		15	40
PARK								$							
CRIM	10		28	2	1	5	11	$ 655	2						
TOTAL	56		480	2	21	211	198	$ 8,165	4			10		15	40
WARREN COUNTY DISTRICT COURT															
PARKS PRY WILSON PRESIDING															
TRAF	38		420	1	42	142	184	$ 8,074	3			11	1	10	12
PARK			1			2		$ 15						1	
CRIM	35		161	43	29	20	49	$ 2,317	1	3	13		4		
TOTAL	73		582	44	71	164	232	$ 10,406	4	3	13	11	5	11	12
WARREN COUNTY TOTAL															
TRAF	884		8772	8	413	5163	2385	$ 148,202	33	17	12	193	24	137	336
PARK	37		3524		187	2981	76	$ 6,842					2	9	36
CRIM	523	21	1754	308	347	91	823	$ 33,939	26	53	87	4	137		
TOTAL	1424	28	14054	316	947	8235	3284	$ 189,082	59	70	99	197	163	146	372
NEW JERSEY STATE TOTAL															
TRAF	45,428		723,347	847	47,631	422,222	212,379	$12,542,361	4,819	592	982	13,557	11,513	29,512	25,472
PARK	5,424		2,039,239	43	59,859	1,521,845	83,574	$ 6,261,557	1,251	25	129	21	13,203	62,342	90,427
CRIM	44,283	3,591	4,222,175	39,835	53,151	12,913	53,017	$ 3,174,235	5,813	12,535	8,647	1,374	17,471		
TOTAL	95,135	3,591	3,048,783	42,525	153,453	1,933,211	348,453	$22,378,153	11,883	13,154	9,758	15,152	42,185	93,231	81,811

Source: Monthly Municipal Court Reports

(1) Includes proceedings in the County District Courts, for cases arising in municipalities in which there are no municipal courts. Also includes proceedings in Palisades Interstate Park Police Court.

(2) "If the offense charged may constitute a neighborhood or domestic dispute, but may not violate a statute or ordinance, a notice may issue to the person or persons charged, requesting their appearance before the court in order to determine whether or not a complaint should issue," Rule 7:3-2. Not applicable in traffic cases.

(3) Appropriate follow-up procedure is provided for by Rule 7:6-3.

APPENDIX H

Editorial, New Jersey Law Journal October 31, 1963— Defense of Indigents, Put the Responsibility Where it Belongs

DEFENSE OF INDIGENTS
PUT THE RESPONSIBILITY WHERE IT BELONGS

The defense of indigent persons charged with crime has become an emergent problem on the contemporary legal scene.

Despite years of agitation by the bar for a public defender system, our legislature has done nothing about it, and the entire burden of protecting the civil rights of indigent defendants has been thrust upon the lawyers of this State.

The gravity of the situation may be gleaned from the fact that from September 1, 1962, to September 1, 1963, in Essex County alone, there were 1168 assignments of counsel to represent indigents under indictment, besides 15 assignments in habeas corpus proceedings and 30 assignments to handle appeals. (This in addition to 29 assignments in homicide cases.)

And now that the courts require legal representation at the police court level, the number of assignments may be expected to reach into the thousands. According to the recent annual report of the Administrative Director of Courts, during the court year 1961-1962 the municipal courts of this State referred 18,013 matters either to a Grand Jury or to the Juvenile and Domestic Relations Courts. They also disposed of 91,140 non-traffic cases. During that same year the judges revoked or suspended

11,741 drivers' licenses, and committed 23,269 defendants to jail.

The bar of this State is justly proud of the conscientious and diligent service of its members assigned to represent indigents; but to expect the lawyers of this State to bear this appalling responsibility pro bono publico is, in effect, to expropriate the profession and reduce lawyers to vassals of the state, without compensation, and without even reimbursement for their expenses. No other profession has ever been called upon to make quite such a sacrifice.

The recent plan adopted by the Essex County Bar Association to meet this situation may hold promise for the future, but it is now in embryonic form and for the present can only be regarded as a temporary emergency measure. This is neither the time nor the place to discuss its merits or demerits. The danger of any temporary plan is that it may divert the attention of the public from the problem and tend to lull the public into false security that all is well, with the result that a permanent solution may be unduly delayed and the problem become more serious than ever.

The time has come for plain talk and affirmative action. The responsibility belongs to the State and should be put at its doorstep.

Our rules of criminal procedure provide for the assistance of counsel before magistrates courts, R.R. 3:2-3. And in Gideon v. Wainwright, 372 U. S. 335, decided this year, the United States Supreme Court held that a state must furnish counsel to every indigent defendant charged with a felony offense. While that court had ruled differently in 1942 in Betts v. Brady, 316 U. S. 455, it is believed

that the failure of the states to meet this problem—the results of which were evident in numerous cases coming before the Supreme Court—influenced a change in the court's position.

Since it is the duty of our courts to see to it that the constitutional liberties of the people are protected, they too have the duty, and we think, they have the inherent and constitutional power, to solve this problem.

In John S. Westervelt Sons v. Regency, Inc., 3 N. J. 472 (1950) our State Supreme Court held that under the constitutional grant of power to make rules of practice and procedure, it had a right of control in the field of counsel fees. Under this power the court originally promulgated Rule 3:54-7 which as amended is now R.R. 4:55-7. There is therefore no reason why the Supreme Court cannot by general rule or by an amendment of R.R. 4:55-7 provide for counsel fees in criminal cases, to be paid for by the state or the county. Any rules adopted on the subject should also set up proper standards and procedures for determining who are "indigents." In the past, the court has been hesitant—quite understandably—to amend its rules in this respect, in the expectation that the Legislature would do something about it. See discussions in State v. Steenback, 34 N. J. 103; State v. Horton, 34 N. J. 515, 526; State v. Donaldson, 36 N. J. 45 (1961). But the time for hesitation is past. The failure of the Legislature to act has resulted and will continue to result in the failure of adequate means of defense to many indigent defendants.

The situation is too serious to permit any further temporizing. We suggest that the Supreme Court amend the rules of court to permit counsel fees in such cases, or that it at least call a judicial conference to consider this urgent problem.

APPENDIX I

Relevant Part of Public Defender Statute, State of New Jersey, 2A:158-1 to 17

2A:158A-1. Declaration of State Policy

It is hereby declared to be the policy of this State to provide for the realization of the constitutional guarantees of counsel in criminal cases for indigent defendants by means of the system and program established and authorized by this act to the end that no innocent person shall be convicted, and that the guilty, when convicted, shall be convicted only after a fair trial according to the due process of the law.

L. 1967, c. 43, § 1, eff. July 1, 1967.

Historical Note: Sections 24 and 25 of L. 1967, c. 43, provided:

> "There is appropriated to the Office of the Public Defender for the purposes of this act such sums as shall be included in any general or special appropriation act.
>
> "This act shall take effect July 1, 1967."

Title of Act: An Act concerning the representation of indigent defendants in criminal cases, creating the Office of the Public Defender, prescribing its functions, powers and duties, and providing for an appropriation. L. 1967, c. 43.

2A:158A-2. "Indigent Defendant" Defined

As used herein "indigent defendant" means a person who is formally charged with the commission of an in-

dictable offense, and who does not have the present financial ability to secure competent legal representation and to provide all other necessary expenses of representation. L. 1967, c. 43, § 2, eff. July 1, 1967.

2A:158A-3. Establishment

There is hereby established in the Executive Branch of the State Government the Office of the Public Defender. For the purpose of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the Office of the Public Defender is hereby allocated within the Department of Institutions and Agencies, but notwithstanding said allocation, the office shall be independent of any supervision or control by the department or by any board or officer thereof.

L 1967, c. 43, § 3, eff. July 1, 1967.

2A:158A-4. Public Defender; Appointment; Term, Salary; Vacancy

The head of the office shall be the Public Defender, who shall be an attorney-at-law of this State and experienced in the practice of law in this State. He shall be appointed by the Governor with the advice and consent of the Senate for a term of 5 years and until the appointment and qualification of his successor. He shall devote his entire time to the duties of his office and shall receive such salary as shall be provided by law. Any vacancy occurring in the office of the Public Defender shall be filled in the same manner as the original appointment, but for the unexpired term only.

L. 1967, c. 43, § 4, eff. July 1, 1967.

Historical Note: Section 23 of L. 1967, c. 43, provided:

> "Any appointments authorized by this act may be made prior to the effective date hereof."

2A:158A-5. Duties of Public Defender

It shall be the duty of the Public Defender to provide for the legal representation of any indigent defendant who is formally charged with the commission of an indictable offense.

All necessary services and facilities of representation (including investigation and other preparation) shall be provided in every case.

Representation as herein provided for shall include any direct appeal from conviction and such post-conviction proceedings as would warrant the assignment of counsel pursuant to the court rules.

Representation for indigent defendants (a) may be provided in any Federal court in any matter arising out of or relating to an action pending or recently pending in a court of criminal jurisdiction of this State and (b) may be provided in any Federal court in this State where indigent defendants are charged with the commission of a Federal criminal offense and where the representation is under a plan adopted pursuant to the Criminal Justice Act of 1964 (18 U.S.C. 3006A).[1]

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[1] 18 U.S.C.A. § 3006A.

Appendix I

L. 1967, c. 43, § 5, eff. July 1, 1967.

Cross Reference : Assignment of Counsel for indigent persons, see Rules 3:4-2; 3:27. Appeals, see Rule 2:7-2. Post-conviction relief, see Rule 3:22-6.

2A:158A-6. Deputy and Assistant Public Defenders; Appointment; Salary

The Public Defender shall appoint deputy public defenders and assistant deputy public defenders in such number as he shall require to assist him in the performance of the duties of his office. Deputies and assistant deputies shall be attorneys-at-law of this State, shall serve at the pleasure of the Public Defender and shall receive such salaries as he shall from time to time designate.

L. 1967, c. 43, § 6, eff. July 1, 1967.

Historical Note: Section 23 of L. 1967, c. 43, provided:

> "Any appointments authorized by this act may be made prior to the effective date hereof."

2A:158A-7. Powers of Public Defender

The Public Defender shall:

(a) Appoint such investigators, stenographic and clerical assistants and other personnel as may be required for the conduct of the office, subject to the provisions of Title 11, Civil Service, of the Revised Statutes,[1] and other applicable statutes;

(b) Establish and maintain suitable headquarters for the office and such regional quarters within the State as he shall deem necessary for the proper functioning of the office;

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[1] Section 11:1-1 et seq.

Appendix I

(c) Maintain one or more trial pools of lawyers who shall be available to serve as counsel on a case basis as needed;

(d) Engage counsel from said trial pools on a case basis as may be necessary for the proper performance of the duties of the office and compensate them for their services;

(e) Accept the services of volunteer workers or consultants at no compensation or at nominal or token compensation and reimburse them for their proper and necessary expenses;

(f) Consult and cooperate with professional bodies and groups concerning and concerned with the causes of criminal conduct, the development of effective means for reducing and discouraging the commission of crime, the rehabilitation and correction of persons charged and convicted of crime, the administration of criminal justice and the administration and conduct of the Office of the Public Defender;

(g) Keep and maintain proper financial records and records in respect to particular cases handled and develop records for use in the calculation of direct and indirect costs of all or any aspect of the operation of the office;

(h) On the basis of available data or estimates to prepare schedules of rates from time to time of amounts to be paid for services rendered other than by the staff, taking into account the nature of the services, the time involved, trouble and risk, the skill and experience required, and other pertinent factors;

(i) Have general responsibility for the operation of the office;

(j) Formulate and adopt rules and regulations as are necessary to effectuate the purposes of this act and for the efficient conduct of the work and general administration of the office, its professional staff and other employees;

(k) Be the request officer of the office within the meaning of such term as defined in chapter 112 of the laws of 1944.[2]

(l) Have the authority to make all necessary arrangements to coordinate services to the office with any Federal program to provide counsel to the indigent, and to arrange for the receipt by the office, wherever possible, of sums allowable under such Federal program, whether by direct allowance, by assignment or transfer, or otherwise.

L. 1967, c. 43, § 7, eff. July 1, 1967. Amended by L. 1970, c. 308, § 1, eff. Dec. 16, 1970.

Historical Note: The 1970 amendment deleted a provision in subsection (b) which would not allow an office or regional quarters to be located in any municipal or county building or office.

Section 23 of L. 1967, c. 43, provided:

> "Any appointments authorized by this act may be made prior to the effective date hereof."

2A:158A-8. Lawyers to Represent Defendants on Case Basis; Selection

In selecting deputy public defenders and assistant deputy public defenders or lawyers to be available to repre-

[2] Sections 52:27B-1 to 52:27B-85.

sent defendants on a case basis, the Public Defender shall make his selections on a basis calculated to provide the respective defendants with competent counsel in the light of the nature, complexity and other characteristics of the cases, the services to be performed, the status of the matters, and other relevant factors.

L. 1967, c. 43, § 8, eff. July 1, 1967.

2A:158A-9. Case Workload; Division; Employment of Counsel

To achieve a proper balance between the services to be provided pursuant to this act and the efficiency of the operation as a whole, as well as to stimulate the continued development of professional experience and interest in the administration of criminal justice, the Public Defender shall divide the case workload of the office between the professional staff and the trial pool or pools. In any case where the matter involved requires some special experience or skill not available on the professional staff, the Public Defender shall engage counsel on a case basis, and shall assign a suitable member of the staff to the extent feasible to assist counsel so engaged. Counsel shall also be engaged on a case basis whenever needed to meet case load demands, or to provide independent counsel to multiple defendants whose interests may be in conflict.

L. 1967, c. 43, § 9, eff. July 1, 1967.

2A:158A-10. Contracts Authorizing Private or Public Organizations to Execute Functions of Public Defender

The Public Defender is authorized to enter into contracts from time to time with private or public organiza-

tions that are equipped to provide legal services for indigent defendants or to execute any lawful functions of the office of the Public Defender, as occasion may require. Every such contract shall require that the level and quality of the work shall be at least equal to that of the office of the Public Defender, and that all services rendered thereunder shall be under the control and supervision of the Public Defender.

L. 1967, c. 43, § 10, eff. July 1, 1967.

2A:158A-11. Duties of Staff Members and Others Engaged on Case Basis

The primary duty of all members of staff and of others engaged on a case basis shall be to the individual defendant, with like effect and to the same purpose as though privately engaged by him and without regard to the use of public funds to provide the service. This shall not preclude the designation or assignment of different individuals to perform various parts of the service from time to time, the duty in such cases to be the same as would exist in the case of a privately engaged law firm.

L. 1967, c. 43, § 11, eff. July 1, 1967.

2A:158A-12. Attorney-client Privilege

All communications between the individual defendant and any person in or engaged by the Office of the Public Defender whether on a case basis or by contract shall be fully protected by the attorney-client privilege to the same extent and degree as though counsel has been privately engaged. This shall in no way preclude the use by the

office of material in its files, otherwise privileged, for the preparation and disclosure of statistical, case study and other sociological data, provided always that in any such use there shall be no disclosure of identity or of means for discovery of identity of particular defendants.

L.1967, c. 43, § 12, eff. July 1, 1967.

Cross Reference: Lawyer-client privilege, see § 2A:84A-20.

2A:158A-13. Standards and Level of Performance of Attorneys Providing Legal Services.

In providing legal services to defendants pursuant to this act, the Office of the Public Defender and every attorney actually engaged in the performance of the same, whether as a member of the staff or engaged on a case basis or otherwise, shall adhere at all times to the standards and level of performance established from time to time by the Supreme Court of New Jersey in the execution of its duty to supervise the practice of law; and the office shall furnish to such court materials and data as may be requisite to the measurement of the adequacy of the performance hereunder.

L.1967, c. 43, § 13, eff. July 1, 1967.

2A:158A-1. Eligibility for Services; Determination

Eligibility for the services of the Office of the Public Defender shall be determined on the basis of the need of the defendant. Need shall be measured according to the financial ability of the defendant to engage and compen-

sate competent private counsel and to provide all other necessary expenses of representation. Such ability shall be recognized to be a variable depending on the nature, extent and liquidity of assets and on the disposable net income of the defendant on the one hand, and on the nature of the charge, the effort and skill required to gather pertinent information, render advice, conduct trial or render other legal services, and probable expenses to be incurred, on the other hand. In the event that a determination of eligibility cannot be made before the time when the first services are to be rendered, or if an initial determination is found to be erroneous, the office shall undertake the same provisionally, and if it shall subsequently determine that the defendant is ineligible it shall so inform the defendant, and the defendant shall thereupon be obliged to engage his own counsel and to reimburse the office for the cost of the services rendered to that time.

L.1967, c. 43, § 14, eff. July 1, 1967.

Cross References: Minors, eligibility for services, see § 2A:158A-25. Waiver of court fees for person represented by the public defender, see Rule 1:13-2.

Library References: Criminal Law (Key) 641.6(3). C.J.S. Criminal Law § 979(3).

NOTES OF DECISIONS

1. *In general*

If trial court orders psychiatric examination of witness in criminal prosecution in order to determine competency, witness is entitled to benefit of single counsel so that he is not faced with danger of losing rights at a critical stage

in the criminal process. . State v. Falcetano, 107 N. J. Super. 375, 258 A.2d 391 (1969), clarified in other respects 107 N.J. Super. 383, 258 A.2d 395.

2A:158A-15. FINANCIAL STATUS OF DEFENDANT; INVESTIGATION

The Office of the Public Defender shall make such investigation of the financial status of each defendant at such time or times as the circumstances shall warrant and in connection therewith shall have the authority to require a defendant to execute and deliver such written requests or authorizations as may be requisite under applicable law to provide the office with access to records of public or private sources, otherwise confidential, as may be of aid to it in evaluating eligibility. The office is authorized to obtain information from any public record office of the State or of any subdivision or agency thereof on request and without payment of the fees ordinarily required by law.

L.1967, c. 43, § 15, eff. July 1, 1967.

Library References: Criminal Law (Key) 641.6(3). C.J.S. Criminal Law § 979(3).

Supreme Court, U. S.
FILED
DEC 15 1972
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-720

IN THE MATTER OF THE CONTEMPT OF

ESTHER S. FRANKEL,

AN ATTORNEY AT LAW OF THE STATE OF NEW JERSEY,

Petitioner.

On Petition for Writ of Certiorari to the Supreme Court of New Jersey

BRIEF FOR RESPONDENT IN OPPOSITION

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Adams Press Corp., 11 Commerce Street, Newark, N. J.—Market 3-0611-12

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-729

IN THE MATTER OF THE CONTEMPT OF

ESTHER S. FRANKEL,

AN ATTORNEY AT LAW OF THE STATE OF NEW JERSEY,

Petitioner.

On Petition for Writ of Certiorari to the Supreme Court of New Jersey

BRIEF FOR RESPONDENT IN OPPOSITION

Counter-Statement of the Case*

On July 6, 1971 Janet Corey, an indigent, was charged with a disorderly persons offense in the Paterson, New Jersey Municipal Court. The court assigned the petition-

* The above facts can be found in Petitioner's Appendix, p. 6 (Pa6).

er, Esther Frankel, an attorney of the State of New Jersey, to represent the defendant (Pa6).

Miss Frankel refused the assignment. The court gave her 24 hours to reconsider her position, warning her that it would hold her in contempt of court if she did not change it (Pa6). Miss Frankel stated that she was doing it as a matter of principle and that she would waive any waiting period for the imposition of judgment and sentence by the court (Pa6). She conceded that she had been fully advised of her rights by the court. The court imposed a fifty dollar fine for contempt of court pursuant to N.J.S.A. 2A:10-1(c) and R. 1:10-1 of the New Jersey Court Rules.

POINT I

Petitioner's claim that her actions were justified because the New Jersey assignment system is unconstitutional is not properly reviewable on an appeal from a judgment of contempt because she could have obtained orderly judicial review of that question without contemning herself.

The petition before this Court is directed toward an ultimate decision invalidating the New Jersey assignment system which requires attorneys to represent without compensation indigents accused of non-indictable offenses. New Jersey Court Rules, R. 3:27-2; see *State in Interest of Anthony Antini, Jr.*, 53 N. J. 488, 495, 251 A. 2d 122 (1969). Petitioner claims that her refusal to accept the assignment in the instant case was justified because the assignment system is unconstitutional.

The courts have consistently held that on an appeal from a contempt conviction, a contemnor cannot assert

that the order he violated was based on error of fact or law as long as it was issued by a court of competent jurisdiction. *Walker* v. *City of Birmingham*, 388 U. S. 307, 317-321 (1967); *In re Teine*, 17 N. J. 170, 177, 110 A. 2d 93 (1954); *In re Contempt of Carton*, 48 N. J. 9, 16, 222 A. 2d 92 (1966). See also *Annot.*, 12 A.L.R. 2d 1059, 1107-1114 (1950) which sets down the general rule at 1107:

> "It is almost unanimously agreed that if the defendant desires to attack the order or the decree as erroneous, he must do so, not by disregarding or violating it and then setting the error up as a defense to a charge of contempt, but by a direct attack thereon by appeal or a motion to set it aside."

In *Walker* v. *City of Birmingham*, *supra*, defendants appealed state contempt convictions arising out of a refusal to obey a court injunction against mass demonstrations. The injunction was based upon a Birmingham parade ordinance. Defendants contended that it was permissible to disobey the court's order because both the ordinance and the injunction itself were unconstitutionally vague.

The Alabama courts said that they would not entertain the attack on the constitutionality of the ordinance and injunction since the defendants could have properly raised those issues by a motion to dissolve the injunction.

The Supreme Court agreed, noting that the defendants were bound to pursue orderly judicial review instead of disobeying the injunction:

> "The rule of law that Alabama followed in this case reflects a belief that in the fair administration of justice no man can be a judge in his own case however exalted his station, however righteous his motives, and irrespective of his race, color, politics,

> or religion. This court cannot hold that the petitioners were constitutionally free to ignore all the procedures of the law and carry their battle to the streets. One may sympathize with the petitioners' impatient commitment to their cause. But respect for judicial process is a small price to pay for the civilizing hand of law, which alone can give abiding meaning to constitutional freedom."

The judgment of contempt was upheld by the Supreme Court.

In *In re Contempt of Carton*, *supra* at 16, the court said of a lawyer's contempt:

> ". . . There must be no defiance of a court, least of all by one of its officers. It is no excuse that the trial judge may be in error. Courts of appeal exist to hear such claims. One who is dissatisfied with the action of a court must obtain a stay or obey the order. He may not ignore it."

The above rationale applies to the instant case. Petitioner openly defied a court command and on appeal attacks the validity of the court's order. She could have gotten an orderly review of her contentions by obeying the court order and subsequently applying to the trial court for compensation for her services. She then could have appealed a denial of her application. Indeed, this has been the traditional practice in this State followed by attorneys seeking compensation for their services. See *State in Interest of Anthony Antini, Jr.*, *supra*; *State* v. *Rush*, 46 N. J. 399, 217 A. 2d 441 (1966); *In re Steenback*, 34 N. J. 89, 167 A. 2d 397 (1961); *State* v. *Horton*, 34 N. J. 518, 170 A. 2d 1 (1961).

Under the general rule stated herein, petitioner cannot now rely upon the alleged constitutional issue concerning the impropriety of the assignment system in New Jersey. Therefore, there is no reason for this Court to grant her relief.

POINT II

Powell v. _Alabama_, 287 U. S. 45 (1932) indicates that no constitutional restraint prohibits the assignment of counsel without compensation.

Petitioner claims that the assignment system violates an attorney's rights against involuntary servitude under the *United States Constitution*, 13th Amendment and unequal treatment under the *United States Constitution*, 14th Amendment; and takes private property without compensation for public use contrary to the *United States Constitution*, Fifth Amendment. It is also alleged that the First Amendment right to dissent has been stifled by the assignment system.

Most of these claims were expressly rejected in *State* v. *Rush*, *supra* at 407-408. Answering the constitutional claims posed by the attorney in Rush, the court said:

> "None of these contentions is new, and if one accepts the premise that the duty to defend the poor is a professional obligation rationally incidental to the right accorded a small segment of the citizenry to practice law, these claims fall away."

Analyzing *Powell* v. *State of Alabama*, 287 U. S. 45 (1932), which underscored the duty of attorneys to represent indigents, the court in *Rush* noted that, "*Powell* did assume that, if attorneys as officers of the Court were

called to serve without pay, no constitutional restraint stood in the way." *State* v. *Rush, supra* at 408.

Thus, decisions of both the United States Supreme Court and the New Jersey Supreme Court directly contravene the defendant's constitutional claims. See also *United States* v. *Dillon*, 346 F. 2d 633 (9 Cir. 1965), *cert. den.* 382 U. S. 978 (1966) and *State* v. *Clifton*, 247 La. 495, 172 So. 2d 657, 667 (Sup. Ct. 1965).

In *Rodriguez* v. *Rosenblatt*, 58 N. J. 281, 295, 277 A. 2d 216 (1971) the New Jersey Supreme Court held that, as a matter of fairness, an indigent charged with a non-indictable offense is entitled to assigned counsel when a conviction would result in imprisonment in fact or other "consequence of magnitude."

The court in *Rodriguez* stated:

> "Our municipal court judges have had and continue to have broad discretion to assign free counsel to indigent defendants wherever justice so requires." 58 N. J. at 295.

No provision for compensating counsel was made in the opinion. It is obvious that if the court had wanted to relieve the attorney of his already existing duty to render free services in the municipal courts, it would have done so in the opinion. Since it did not, the traditional obligation of lawyers continued to exist when defendant refused to accept her assignment.

The court's decision in *Rodriguez* anticipated this Court's opinion in *Argersinger* v. *Hamlin*, —— U. S. ——, 92 S. Ct. 2006 (1972). Nothing in the latter opinion indicates that an attorney's constitutional rights are violated by state procedures for assigning counsel without compensation. In fact, it is noted in the concurring

opinion of Mr. Justices Rhenquist and Powell at 2022, n. 21, that compensation for counsel is often inadequate. The Court did not suggest, however, that this was of constitutional import.

In *State* v. *Rush*, *supra* it was noted that the burden on the bar could reach such dimensions as to violate due process, but such an extraordinary stage had not yet been reached. At that time (1966) the system of assignment without compensation applied to crimes, juvenile offenses and non-indictable offenses. The Public Defender statute, N.J.S.A. 2A:158A-1 *et seq.*, L. 1967, c. 43, has since provided for public representation in the area of crimes. *State in Interest of Anthony Antini, Jr., supra*, provides for compensation for attorneys assigned to represent indigent juvenile offenders where imprisonment likely would follow conviction. Therefore, a great deal of the burden which existed at the time of *Rush* has now been lifted from the bar. If the due process argument was not viable then, it certainly is not now.

It is undoubtedly true that the number of assignments in non-indictable offenses will increase as a result of the *Rodriguez* opinion. However, there has been no demonstration that at this point the increase has so burdened the bar as to give the due process argument vitality. Surely, if the New Jersey Supreme Court had felt so, it would have provided for compensation to attorneys in the *Rodriguez* case or by administrative directive. As noted in Petitioner's brief the Administrative Director of the Courts of New Jersey explicitly stated that the *Rodriguez* decision did not require or authorize such compensation (Pa18).

CONCLUSION

A contemnor may not argue on appeal that the order contemned was based on error in fact or law. He must seek orderly judicial review of that order without disobedience. Therefore, the State of New Jersey contends that the constitutionality of the assignment system in New Jersey is not properly before this Court on review.

Furthermore, this Court has indicated that no constitutional restraint proscribes the assignment of lawyers, as officers of the court, to represent indigents without being recompensed.

For the above reasons, we respectfully request this Court to deny Petitioner's application for a writ of *certiorari*.

Respectfully submitted,

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